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**(2014) 10 MAD CK 0268**

**Madras High Court**

**Case No:** Crl. O.P. Nos. 16780, 18532 and 18534 of 2008 and M.P. No. 1 of 2008

P.K. Balachandran

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Oct. 29, 2014

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 120(B), 120B, 34, 419, 420

**Citation:** (2015) 1 LW(Cri) 239 : (2015) 1 MLJ(Cri) 144

**Hon'ble Judges:** S. Nagamuthu, J

**Bench:** Single Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.

Since common issues are involved in these original petitions, they were heard together and they are disposed of by means of this common order.

2. Seeking to quash the FIR in Crime No. 53 of 2008 on the file of the 1st respondent police, the petitioners, who are accused in the said case have come up with these original petitions. Shri Amit Mehta, who is the 2nd respondent in Crl. O.P. No.16780 and 4th respondent in Crl. O.P. Nos.18532 and 18534 of 2008, is the de facto complainant in the said case.

3. The brief facts of the case would be as follows:- The de facto complainant is the Proprietor of a company known as M/s. Max Chem Pharma. The petitioner in Crl. O.P. No.16780 of 2008, who is A16, and the petitioners 2 & 3 in Crl. O.P. Nos.18532 and 18534 are the Directors of yet another company known as M/s. Pioneer Poultry Feeds and Poultry Products Private Limited, Trichy Road, Pongalur, Coimbatore. It is alleged that the accused company approached the de facto complainant company for purchasing feeds and chemicals for their birds on dates. Accordingly, de facto complainant company supplied the goods on various dates. Towards the said

transactions, the accused company have also issued cheques on various dates. But, later on, the accused company closed the bank account. In the said transaction, a sum of Rs.20,28,500/- was due from the accused company. The accused company, more particularly, the accused, who are Directors of the accused company have failed to repay the said amount. This, according to the de facto complainant company amounts to offences punishable under Sections 120(B), 419, 420 r/w 34 of IPC. On this complaint, the present case has been registered. Seeking to quash this FIR, the petitioners, who are accused in the case in Crime No. 53 of 2008 on the file of City Crime Branch, Coimbatore, are before this court with the original petitions in CrI.O.P. No.16780 and 18532 of 2008. The petitioners in CrI.O.P. No.18534 of 2008 have come up seeking to consolidate all the complaints that have already been received and those which may be received against the petitioner in respect of non-payment of money for supplies effected to it in Crime No. 53 of 2008 on the file of the 1st respondent.

4. I have heard the learned counsel for the petitioners and the learned Additional Public Prosecutor and also perused the records carefully.

5. Though notice has been served on the de facto complainant - Mr. Amit Mehta, he has not made appearance either in person or through a counsel though all these petitions have been listed together all through and thus, it shows that he is not interested in prosecuting the matter further. Therefore, I proceed to dispose of these original petitions on considering the arguments of the learned senior counsel appearing for the petitioners and on perusing the records.

6. The learned counsel appearing for the petitioners would submit that even if all the allegations found in the FIR are taken on the face of it that they were true, even then, no offence as enumerated in the FIR would be made out. Thus, according to him, it is a clear abuse of process of law. Therefore, the FIR is liable to be quashed, the learned senior counsel contended.

7. The learned Additional Public Prosecutor, however, stoutly opposed these original petitions. According to him, the allegations in the FIR would certainly make out offences as stated in the FIR. He would, however, submit that though this case has been pending from the year 2008, because of an order of interim stay granted by this court, no further progress could be made in the matter of investigation.

8. I have considered the above submissions carefully.

9. As rightly pointed out by the learned counsel appearing for the petitioners, in my considered opinion, the dispute involved in this case is purely civil in nature, which needs to be resolved only by the Civil Court. Absolutely, there is no allegation that the accused company ever played any deception or induced the de facto complainant company to part with the property and that the said inducement was by means of fraud or dishonesty. Further, there is also no material to make out an offence under Section 120-B of IPC. Mere failure to pay the amount due on account

of a business transaction, would not make out any offence. It creates only a civil liability. At the most, it can be said that it is only a breach of contract or agreement making out no offence. Thus, in my considered opinion, the registration of the present case is wholly baseless and allowing the investigation to go further would not serve any useful purpose as it would be only a wastage of time. Therefore, applying the law laid down by the Hon"ble Supreme Court in [State of Haryana and others Vs. Ch. Bhajan Lal and others,](#), I am inclined to quash the FIR.

10. In the result, the criminal original petition in CrI.O.P. No.16780 and 18532 of 2008 are allowed and the FIR in Crime No. 53 of 2008 on the file of the City Crime Branch, Coimbatore, is hereby quashed. In view of the order passed in CrI.O.P. Nos.16780 and 18532 of 2008, the Criminal Original Petition in CrI.O.P. No.18534 of 2014 is dismissed. Consequently, connected MPs are closed.